

REMARKS

Claims 1-21 are pending. Claims 22-28 have been withdrawn. Claims 1, 6, 11, 16 and 20 have been amended.

Items 2 and 3 of the Office Action – Restriction Requirement

According to the Examiner, a restriction requirement is required under 35 U.S.C. 121 to either Group I (claims 1-21) or Group II (claims 22-28). As set forth in the January 27, 2005 Office Action, a provisional election was made without traverse to prosecute the invention of Group I (claims 1-21). Group I (claims 1-21) is hereby formally elected in confirmation of this provisional election.

Item 5 of the Office Action - Drawings

The drawings have been objected to as failing to comply with 37 CFR 1.84(p)(5) because Fig. 4 includes an element having the reference number 408 that is not mentioned in the description. The specification has been amended to include references to the element numbered 408 in Fig. 4. Withdrawal of this objection is respectfully requested.

Item 6 of the Office Action - Specification

The disclosure has been objected to because of the following informalities: inconsistent labeling of drawing references (“download manager 603” and “DM603”) at page 15, lines 3 and 7 and duplication of phrases (“The actual download and sleep durations are...”) at page 15, line 14. The specification has been amended in a manner believed to clarify these informalities. Withdrawal of this objection is respectfully requested.

Items 7-8 of the Office Action - Indefiniteness

Claims 1-15, 20, and 21 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 1, 6, 11 and 20 have been amended so that the term “relatively small” has been deleted from these claims. Withdrawal of this rejection for claims 1, 6, 11 and 20 is respectfully requested.

With respect to the rejection of claims 3, 10 and 21 for their inclusion of the term “about” (claims 3 and 21) or “around” (claim 10) this rejection is respectfully traversed. In each of these claims, the term “about” or “around” is included in the following recitations: “...less than about 100Kbytes when compressed” (in claims 3 and 21) or “...less than around 100Kbytes when compressed” (in claim 10).

The term “about” does not generally render a claim indefinite. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1557, 220 USPQ 303, 316 (Fed. Cir. 1983). “About” is not broad or arbitrary but rather is a flexible term with a meaning similar to “approximately.” *Syntex (U.S.A.), Inc. v. Paragon Optical, Inc.*, 7 USPQ 2d 1001, 1038 (D. Ariz. 1987). Under 35 U.S.C. §112 the term “about” entitles the patentee to a broad interpretation of any range claimed in the patent. *Syntex (U.S.A.), Inc. v. Paragon Optical, Inc.*, 7 USPQ 2d 1001, 1038 (D. Ariz. 1987).

The use of the term “about” in claims 3 and 21 and the term “around” in claim 10 are consistent with the plain meaning of “about” (i.e., approximately) set forth by the Federal Circuit. Therefore, it is respectfully asserted that the use of the term “about” in claims 3 and 21 and the term “around” in claim 10 are not indefinite under 35 U.S.C. 112, second paragraph. Withdrawal of this rejection for claims 3, 10 and 21 is respectfully requested.

Items 9-10 of the Office Action – Anticipation

Claims 1, 4 and 5 have been rejected under 35 U.S.C. 102(e) as being anticipated by Chanos et al. (U.S. Patent Appl. No. 2002/0120507). This rejection is respectfully traversed.

The act of selecting in claim 1 has been amended to now recite “selecting an application software from a first web site coupled to a network, the application software being selected by a user at a client computer to the network;” (underlining indicating the language added by amendment).

This amendment is believed to clarify the scope of the selecting act and distinguish claim 1 from Chanos et al.

According to the Examiner, the “packaging file including the selected application software” recited in claim 1 is met by the feature rich advertisement of Chanos et al. while the “first stage software” of claim 1 is met in Chanos et al. by a mechanism for finding requesting or authoring the sending of additional information related to the products or services advertised. In Chanos et al. the feature rich advertisement is not selected by the end user. Therefore, it is respectfully asserted that claim 1, as amended, is patentably distinguishable from Chanos et al. at least for this reason. Claims 5 and 5 depend from amended claim 1 and are therefore believed to be in condition for allowance at least by virtue of their respective dependencies. Withdrawal of this rejection for claims 1, 4, and 5 is respectfully requested.

Items 11 and 12 of the Office Action – Obviousness

Claims 2, 6-9 and 11-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Chanos et al. (‘507) in view of Bodin et al. (6,061,733). This rejection is respectfully traversed.

Claim 2 depends from amended claim 1. For at least the reasons previously set forth above, amended claim 1 is believed to be patentably distinguishable from Chanos et al. Bodin et al. also fails to teach, disclose or suggest the combination of elements recited in amended claim 1. As a result, claim 2 is believed to be patentable over Chanos et al. in view of Bodin et al. at least by virtue of its dependency from amended claim 1. Therefore, withdrawal of this rejection for claim 2 is respectfully requested.

Claim 6 has been amended to now include: “selecting a first software from a first site, the first software being selected by a user at a client computer;” (underlining indicating the language added by amendment). In contrast, Chanos et al fails to disclose the selecting of first software by a user at a client computer and then the downloading of the selected first software in a manner as that recited in amended claim 6. As previously mentioned, Bodin et al. also fails to teach, disclose or suggest the selecting and downloading of a first software in the combination of

elements recited in amended claim 6. Thus, claim 6, as amended is believed to be patentably distinguishable over Chanos et al. and Bodin et al. Claims 7-9 depend from amended claim 6 and are therefore believed to be in condition for allowance at least by virtue of their respective dependencies. Withdrawal of this rejection for claims 6-9 is respectfully requested.

With regard to claim 11, this claim has been amended to now include: “a client computer having a web browser, the client computer being configured to receive the first stage software by downloading the second downloadable software in response to a selection, by a user at the client computer, of the second downloadable software from a web page of the second server computer presented in the web browser, the client computer being configured to receive the first downloadable software in chunks by following instructions included in the first stage software;” (underlining indicating the language added by amendment). Chanos et al. does not teach, disclose or suggest the downloading of a second downloadable software in response to a section – by a user at a client computer - of the second downloadable software from a web page presented in a web browser (of the client computer). In Chanos et al, the feature rich advertisement is downloaded and then presented to an end user for selection thereof rather than being selected by user and then downloaded as recited in amended claim 11. Bodin et al. also fails to disclose the above recited elements in the combination presented in amended claim 11. For at least this reason, claim 11, as amended is believed to now be allowable over Chanos et al. and Bodin et al. Claims 12 through 15 depend from the amended claim 11 and therefore are believed to be in condition for allowance over Chanos et al. and Bodin et al. at least by virtue of their respective dependencies. Accordingly, withdrawal of this rejection for claims 11-15 is respectfully requested.

Claim 16 has been amended to now recite: “the second application software being offered to an end-user ~~who wishes~~ requesting to download the first application software;” (underlining indicating the language added by amendment and strikethrough indicating language removed by amendment). According to the Examiner, the first application software has been equated to the feature rich advertisement of Chanos et al. As previously discussed, Chanos et al. fails to teach, describe or suggest a request to download a feature rich advertisement by an end user. In Chanos

et al, rather, the feature rich advertisement is first downloaded to the client and then a set of options are presented after the user selects the feature rich advertisement. Bodin et al. also fails to teach these elements in the combination set forth in amended claim 16. Therefore, claim 16 as amended is believed to be patentable over Chanos et al in view of Bodin et al. Claims 17-21 depend from amended claim 16 and therefore are believed to be in condition for allowance at least by virtue of their respective dependencies. Withdrawal of this rejection for claims 16-21 is respectfully requested.

Conclusion


Thus, at least for the reasons stated above, claims 1-21 are currently presented are believed to be in condition for allowance. If the Examiner has any questions or needs any additional information, the Examiner is invited to telephone the undersigned attorney at (650) 843-3215.

In addition, if for any reason an insufficient fee has been paid, the Examiner is hereby authorized to charge the insufficiency to Deposit Account No. 05-0150.

Date: April 8, 2005

Respectfully submitted,

Squire, Sanders & Dempsey L.L.P.
600 Hansen Way
Palo Alto, CA 94304
Telephone (650) 856-6500
Facsimile (650) 843-8777

By: 
Vidya R. Bhakar
Registration No. 42,323